IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7048 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATKUMAR RAMESHCHANDRA TRIVEDI & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BIPIN P JASANI for Petitioner(s) : 1 - 4.MR JJ YAJNIK for Petitioner(s) : 1 - 4.
MR L B DABHI, Ld.AGP for Respondent(s) : 1,
MR MITUL K SHELAT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 06/02/2006

ORAL JUDGMENT

1. The petitioners, in all four, have filed this petition under Article 226 of the Constitution of

India praying for quashing and setting aside the impugned action of the Respondent University in not releasing the payment of Examination Allowance from the date of joining and not extending the benefits of extra overtime allowance to the petitioners as being arbitrary, discriminatory, illegal, unjustified, violative of Article 14 and 16 of the Constitution of India and against the principles of natural justice. The petitioners have also prayed for direction to the respondent no.2 University to extend the benefits of examination and extra overtime allowance legitimately payable to the petitioners forthwith.

2. It is the case of the petitioners that the Government of Gujarat, has passed resolution dated 01.05.1978 wherein it was decided that non-teaching staff working in the University who are actually doing the examination work may be paid extra allowances at the rate of 10% of the basic pay with effect from 01.04.1978. Later on the State Government, vide its resolution dated 06.11.1987 has decided to pay extra allowances with effect

from 01.06.1987 for doing examination work. It is further stated that respondent university has also passed resolution dated 10.07.1981 whereby it was decided that for smooth working of examination work, the services of all the employees who are working in various departments of University should be paid examination allowances as well as extra overtime allowances with effect from 1.7.1981. It is further submitted that by virtue of Circular Dated 26.09.1988, the respondent no.2 university has decided to abolish the overtime system subject to the criteria laid down therein. It is further stated that the petitioners have also made request to extend the benefits of examination allowance and for extra overtime allowance. However, the said request of the petitioners made jointly with the employees who were excluded from getting same benefits, was rejected by the respondent authority.

3. The grounds for challenging the decision of the respondent university were that the petitioners were regularly appointed by the University and they were working on various posts from peon to

Stenographer in various departments and also were connected with the work of examination. It was therefore submitted that it was unjustifiable to deny their rights of getting examinations and extra overtime allowance benefits, as per the policy of the university. It was further stated that petitioners were entitled to get these allowances and the same were illegally denied. It was further stated that petitioners were working and connected with the examination work and during the examination time, they worked after office hours and therefore, they are entitled to get the benefits and allowances. It was further stated that those employees who joined after 1.7.1981 were made eligible for examination allowance and extra allowance irrespective of date of joining. It was further stated that the petitioners' case should be considered by the respondent university by way of modification of the scheme of examination allowance as per the guidelines of Government Resolution referred to above. It is further stated that about 120 employees were not getting examination allowances and were excluded from getting benefits

without any justifiable reasons. The respondent university should have therefore treated them equally with the similarly situated persons.

4. The petition was admitted and rule was issued on 18.10.1988. However, interim relief as prayed for was not granted. The Court has observed that grant of interim relief would amount to allowing the petition at that stage without adjudicating the issues involved in the matter.

5. The petitioner moved Civil Application praying for interim relief. However, the said Civil Application was also rejected.

6. On behalf of respondent, affidavit-in-reply, is filed wherein it is stated that no conditions of service has been abridged by any action of the University. It is made clear that at the time of the recruitment of the petitioners, it was specifically stated in their letter of appointment that petitioners would not be entitled to examination honorarium. It was further stated that

the petitioners were therefore estopped from contending that the petitioners were entitled to examination honorarium. It was further stated that it was the part of the condition of service of the petitioners that petitioners would not be entitled to payment of any such honorarium. It is further stated that the conditions of service of the petitioners could not be compared with the conditions of service of other employees of the University, who were paid examination honorarium. It was further stated that it would be neither logical nor possible to withdraw any existing benefit which was in force for over two decades and therefore, even at the cost of incurring financial loses, the University had continued to pay the examination honorarium to the existing employees who were recruited on or before 1st July, 1981. It was also made it clear that the employees recruited prior to July 1981 and employees subsequently recruited form a separate class. From the new recruits, no additional work was taken and their duty hours were not increased. It was further stated that the examination allowance was

introduced with a view to compensate the extra work the employees have to put in during examination season. The university extended the working hours by one hour for the staff whose services were considered necessary and to compensate for the extra one hour work daily, for a period of about six months in a year, the allowance was paid round the year. The allowance was paid to all the non-teaching staff of the University.

7. It is further stated that the Second Pay Commission recommended the withdrawal of examination allowance and that it further recommended the grant of special pay to few categories of staff at lower level to compensate them for extra work during examination season. The recommendation was not feasible and practical.

8. Affidavit-in-rejoinder was filed to the affidavit in reply by the petitioners. It is stated that it would be highly unreasonable to discriminate the petitioners from the employees working under the University who were recruited after 1981 and yet

they have been paid examination allowance. In this regard it was clarified that those persons have completed 240 days prior to 1981 and hence examination allowance was paid to them.

9. Heard learned advocates for the respective parties and after having considered their submissions and pleadings contained in the memo of petition, affidavit-in-reply and affidavit-in-rejoinder and after having gone through the resolutions passed by the Government as well as by the University, the Court is of the view that since the present petitioners have been recruited after 1981 and since they have not completed 240 days before 1981 they are not entitled to claim any examination allowance or any other allowances. The Court is also of the view that since no extra duty was taken by the present petitioner they are also not entitled to extra benefits since in the condition of service it was made clear that the petitioners were not entitled to get extra overtime benefit. The Court cannot therefore interfere and direct the University to pay these allowances. Even

otherwise, the petitioners are altogether of different cases and they can not be compared with the persons retired before 1981 and hence there is no violation of Articles 14 and 16 of the Constitution of India. Hence, considering the entire facts and circumstances, the Court is of the view that no relief prayed for in the petition can be granted. The petition is accordingly dismissed. Rule is discharged without any order as to costs.

(K.A.PUJ, J.)

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